



General Assembly

Amendment

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Offered by:

SEN. RORABACK, 30th Dist.

To: Subst. Senate Bill No. 872

File No. 179

Cal. No. 189

**"AN ACT ESTABLISHING A FARMLAND PRESERVATION
ADVISORY BOARD WITHIN THE DEPARTMENT OF
AGRICULTURE."**

After the last section, add the following and renumber sections and internal references accordingly:

"Sec. 501. Section 22-26bb of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

As used in this chapter:

(a) "Agricultural land" means any land in the state suitable by reference to soil types, existing and past use of such land for agricultural purposes and other relevant factors for the cultivation of plants for production of human food and fiber or production of other useful and valuable plant products and for the production of animals, livestock and poultry useful to man and the environment, and land capable of providing economically profitable farm units, and may

include adjacent pastures, wooded land, natural drainage areas and other adjacent open areas;

(b) "Commissioner" means the Commissioner of Agriculture;

(c) "Department" means the Department of Agriculture;

(d) "Development rights" means the rights of the fee simple owner or leaseholder of agricultural land to develop, construct on, sell, lease or otherwise improve the agricultural land for uses that result in rendering such land no longer agricultural land, but shall not be construed to include: (1) The uses defined in subsection (q) of section 1-1, (2) the rights of the fee owner or leaseholder of agricultural land to develop, construct on, sell, give or transfer in any way the property in its entirety, lease the property for a term of less than twenty-five years or otherwise improve the agricultural land to preserve, maintain, operate or continue such land as agricultural land, including but not limited to construction thereon of residences for persons directly incidental to farm operation and buildings for animals, roadside stands and farm markets for sale to the consumer of food products and ornamental plants, facilities for the storing of equipment and products or processing thereof or such other improvements, activities and uses thereon as may be directly or incidentally related to the operation of the agricultural enterprise, as long as the acreage and productivity of arable land for crops is not materially decreased and due consideration is given to the impact of any decrease in acreage or productivity of such arable land upon the total farm operation, except that new construction or modification of an existing farm building necessary to the operation of a farm on prime farmland, as defined by the United States Department of Agriculture, of which the state has purchased development rights shall be limited to not more than five per cent of the total of such prime farmland, (3) the rights of the fee owner or leaseholder to provide for the extraction of gravel or like natural elements to be used on the farm for purposes directly or incidentally related to the operation of the agricultural enterprise or (4) the existing water and mineral rights, exclusive of gravel, of the fee owner or

leaseholder;

(e) "Owner" means any person, corporation, limited liability company, partnership, trust, municipal corporation, public utility or any other private or public entity that [shall be] is the fee simple owner of agricultural land or who [shall] by operation of law [have] has the power to exercise the rights of a fee simple owner;

(f) "Leaseholder" means any person, corporation, limited liability company, partnership, trust, municipal corporation, public utility or any other private or public entity that is the holder of a long term leasehold interest having not less than seven hundred years to run as of the time of acquisition of development rights to such land or interest pursuant to section 22-26cc;

[(f)] (g) "Municipality" means any city, town, borough, district, or association with municipal powers;

[(g)] (h) "Prime farmland" means soils defined by the United States Department of Agriculture as the best suited to producing food, feed, forage, fiber and oilseed crops;

[(h)] (i) "Restricted agricultural land" means land and the improvements thereon for which development rights are held by the state of Connecticut;

[(i)] (j) "Restriction" means the encumbrance on development uses placed on restricted lands as a result of the acquisition of development rights by the state of Connecticut;

[(j)] (k) "Residences" means single-family residential dwellings and any associated on-site septic disposal system or potable well;

[(k)] (l) "Building" means (1) any permanent structure used for holding animals, (2) roadside stands and farm markets for sale to the consumer of food products and ornamental plants, (3) facilities for the storing of equipment and products or the processing of products, and

(4) animal waste storage facilities;

[(l)] (m) "Arable land" means land currently used for the production of crops or pasture and land considered prime and important farmland soil by the United States Department of Agriculture;

[(m)] (n) "Gravel or like natural elements" means rounded or angular fragments of rock and associated soil material;

[(n)] (o) "Economically profitable farm unit" means an acreage of arable land capable of producing a sustained annual gross income of significant value as determined by the commissioner;

[(o)] (p) "The property in its entirety" means the entire acreage of restricted land without division or subdivision;

[(p)] (q) "Persons directly incidental to the farm operation" means any person who participates in the farm operation on the restricted land on a full-time basis and any owner or leaseholder of the restricted land regardless of whether or not he or she participates in the farm operation on a full-time basis.

Sec. 502. Section 22-26cc of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(a) There is established within the Department of Agriculture a program to solicit, from owners or leaseholders of agricultural land, offers to sell the development rights to such land and to inform the public of the purposes, goals and provisions of this chapter. The commissioner, with the approval of the State Properties Review Board, shall have the power to acquire or accept as a gift, on behalf of the state, the development rights of any agricultural land, if offered by the owner or leaseholder. Notice of the offer shall be filed in the land records wherein the agricultural land is situated. If ownership of any land for which development rights have been offered is transferred or leased, the offer shall be effective until the subsequent owner or leaseholder revokes the offer in writing. The state conservation and

development plan established pursuant to section 16a-24 shall be applied as an advisory document to the acquisition of development rights of any agricultural lands. The factors to be considered by the commissioner in deciding whether or not to acquire such rights shall include, but not be limited to, the following: (1) The probability that the land will be sold for nonagricultural purposes; (2) the current productivity of such land and the likelihood of continued productivity; (3) the suitability of the land as to soil classification and other criteria for agricultural use; (4) the degree to which such acquisition would contribute to the preservation of the agricultural potential of the state; (5) any encumbrances on such land; (6) the cost of acquiring such rights; and (7) the degree to which such acquisition would mitigate damage due to flood hazards. Ownership by a nonprofit organization authorized to hold land for conservation and preservation purposes of land which prior to such ownership qualified for the program established pursuant to this section shall not be deemed to diminish the probability that the land will be sold for nonagricultural purposes. After a preliminary evaluation of such factors by the Commissioner of Agriculture, he shall obtain and review one or more fee appraisals of the property selected in order to determine the value of the development rights of such property. The commissioner shall notify the Department of Transportation, the Department of Economic and Community Development, the Department of Environmental Protection and the Office of Policy and Management that such property is being appraised. Any appraisal of the value of such land obtained by the owner or leaseholder and performed in a manner approved by the commissioner shall be considered by the commissioner in making such determination. The value of development rights for all purposes of this section shall be the difference between the value of the property for its highest and best use and its value for agricultural purposes as determined by the commissioner. The use or presence of pollutants or chemicals in the soil shall not be deemed to diminish the agricultural value of the land or to prohibit the commissioner from acquiring the development rights to such land. The commissioner may purchase development rights for

a lesser amount provided he complies with all factors for acquisition specified in this subsection and in any implementing regulations. In determining the value of the property for its highest and best use, consideration shall be given but not limited to sales of comparable properties in the general area, use of which was unrestricted at the time of sale.

(b) Upon the acquisition by the commissioner of the development rights of agricultural land, the commissioner shall cause to be filed in the appropriate land records and in the office of the Secretary of the State a notice of such acquisition which shall set forth a description of the agricultural land as will be sufficient to give any prospective purchaser of such agricultural land or creditor of the owner or leaseholder thereof notice of such restriction. Upon such filing, the owner or leaseholder of such agricultural land shall not be permitted to exercise development rights with respect to such land, and such development rights shall be considered and deemed dedicated to the state in perpetuity, except as hereinafter provided. If restricted land is to be sold, the owner or leaseholder shall notify, in writing, the commissioner of such impending sale not more than ninety days before transfer of title to the land and shall provide the commissioner with the name and address of the new owner or leaseholder.

(c) The commissioner shall have no power to release such land from its agricultural restriction, except as set forth in this subsection. The commissioner, in consultation with the Commissioner of Environmental Protection and such advisory groups as the Commissioner of Agriculture may appoint, may approve (1) a petition by the owner or leaseholder of the restricted agricultural land to remove such restriction provided such petition is approved by resolution of the legislative body of the town, or (2) a petition by the legislative body of the town in which such land is situated to remove such restriction provided such petition is approved in writing by said owner or leaseholder. Upon approval of such a petition by the commissioner, the legislative body of the town shall submit to the

qualified voters of such town the question of removing the agricultural restriction from such land or a part thereof, at a referendum held at a regular election or a special election warned and called for that purpose. In the event a majority of those voting at such referendum are in favor of such removal, the restriction shall be removed from the agricultural land upon filing of the certified results of such referendum in the land records and the office of the Secretary of the State, and the commissioner shall convey the development rights to such owner or leaseholder provided such owner or leaseholder shall pay the commissioner an amount equal to the value of such rights. Such petition shall set forth the facts and circumstances upon which the commissioner shall consider approval, and said commissioner shall deny such approval unless he determines that the public interest is such that there is an overriding necessity to relinquish control of the development rights. The commissioner shall hold at least one public hearing prior to the initiation of any proceedings hereunder. The expenses, if any, of the hearing and the referendum shall be borne by the petitioner. In the event that the state sells any development rights under the procedure provided in this subsection, it shall receive the value of such rights.

(d) Whenever the commissioner acquires the development rights of any agricultural land and the purchase price of such development rights is ten thousand dollars or more, said commissioner and the owner or leaseholder of such land may enter into a written agreement which provides for the payment of the purchase price in two or three annual installments, but no interest shall be paid on any unpaid balance of such purchase price.

(e) Whenever the commissioner acquires the development rights to any agricultural land, and any municipality in which all or part of the land is situated paid a part of the purchase price from a fund established pursuant to section 7-131q, such municipality and the state may jointly own the development rights, provided joint ownership by such municipality shall be limited to land within its boundaries. The

land may be released from its agricultural restriction in accordance with the provisions of subsection (c) of this section. The commissioner shall adopt regulations in accordance with the provisions of chapter 54 establishing procedures for the joint acquisition of development rights to agricultural land.

(f) The acquisition of the development rights to any agricultural land by the commissioner shall not be deemed to be ownership of such land and the state shall not be liable for pollution or contamination of such land and no person may bring a civil action against the state for damages resulting from pollution or contamination of such agricultural land.

(g) The commissioner may issue a letter of intent requesting the assistance of a nonprofit organization, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, in acquiring the development rights to certain agricultural land. If such organization acquires such rights it may sell them to the commissioner based on a purchase agreement. Such agreement may include reimbursement for reasonable expenses incurred in the acquisition of the rights as well as payment for the rights. The commissioner may enter into joint ownership agreements to acquire the development rights to any qualified agricultural land with any nonprofit organization, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, provided the mission of such nonprofit organization is the permanent protection of agricultural land for the purposes of continued agricultural use.

(h) In addition to development rights, the commissioner may acquire or accept as a gift the rights of the owner or leaseholder to construct any residences or any farm structures on agricultural land.

(i) The Commissioner of Agriculture, pursuant to any cooperative

agreement with the United States Department of Agriculture for the disbursement of funds under federal law, may require that any property to which rights are acquired under this section with such funds shall be managed in accordance with a conservation plan which utilizes the standards and specifications of the Natural Resources Conservation Service field office technical guide and is approved by such service. Any instrument by which the commissioner acquires such rights and for which any such funds are used may provide for a contingent right in the United States of America in the event that the state of Connecticut fails to enforce any of the terms of its rights acquired under this section which failure shall be determined by the United States Secretary of Agriculture. Such contingent right shall entitle the secretary to enforce any rights acquired by the state under this section by any authority provided under law. Such instrument may provide that such rights shall become vested in the United States of America in the event that the state of Connecticut attempts to terminate, transfer or otherwise divest itself of any such rights without the prior consent of the United States Secretary of Agriculture and payment of consideration to the United States and may further provide that title to such rights may be held by the United States of America at any time at the request of the United States Secretary of Agriculture. In connection with such an agreement, the commissioner may hold the United States harmless from any action based on negligence in the procurement or management of any rights acquired under this section and may assure that proper title evidence is secured, that the title is insured to the amount of the federal cost paid for the interest of the United States of America and that, in the event of a failure of title, as determined by a court of competent jurisdiction, and payment of insurance to the state, the state will reimburse the United States for the amount of the federal cost paid.

(j) The commissioner, when acquiring the development rights of any agricultural lands on behalf of the state, may incorporate deed requirements in accordance with the provisions of the federal Farm and Ranch Lands Protection Program, 7 CFR 1491.1, et seq.

Sec. 503. Section 22-26jj of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(a) The Commissioner of Agriculture, with the approval of the State Properties Review Board, may acquire by purchase or accept as a gift, on behalf of the state, the fee simple title of any agricultural real property and any personal property related to such real property, including, but not limited to, machinery, equipment, fixtures and livestock. The state conservation and development plan established pursuant to chapter 297 shall be used as an advisory document in connection with acquisition of such property. The commissioner, in deciding whether or not to acquire such property, shall consider all of the factors stated in section 22-26cc and shall further consider the likelihood of subsequent sale of such property by the department for agricultural purposes, subject to the state's retention of development rights. After a preliminary evaluation of such factors, the Commissioner of Agriculture shall obtain and review one or more fee appraisals of the property in order to determine the value of such property. Each such appraisal shall include an itemization of (1) the total value of the land, (2) the value of the land as agricultural land, (3) the value of the development rights of the land, and (4) the value of any related personal property proposed to be included in any sale. The commissioner shall give notice of any such appraisal to the Departments of Transportation, Economic and Community Development and Environmental Protection and the Office of Policy and Management. Any such appraisal may be obtained by the owner or leaseholder of the property and, if performed in a manner approved by the commissioner, shall be considered by the commissioner in making such determination. The commissioner may purchase such property for a lesser price than any price suggested by any such appraisal provided all considerations for acquisition specified in this subsection are taken into account. In determining the value of the property, consideration shall be given to sales of comparable properties in the general vicinity.

(b) After the acquisition of the fee simple title of any agricultural real property and any related personal property, the commissioner shall sell such property, exclusive of any development rights, for agricultural purposes as soon as practicable. The state shall retain any development rights. The commissioner may lease or otherwise transfer, assign or manage such property for agricultural, open space or other qualified purposes, in accordance with subsection (d) of this section, until such time as a sale as required by this section is completed.

(c) The commissioner may lease all or part of one property acquired by him under this section as part of a demonstration project, in accordance with subsection (d) of this section, provided such project is approved by the Secretary of the Office of Policy and Management. Such property may be leased to one or more agricultural users for a period not to exceed five years. Such lease may be renewed for periods not to exceed five years. Any property leased under such demonstration project shall be exempt from taxation by the municipality in which the property is located. The assessed valuation of the property shall be included with the assessed valuation of state-owned land and buildings for purposes of determining the state's grant in lieu of taxes under the provisions of section 12-19a.

(d) No contract to sell, lease or otherwise transfer, assign or manage such property for agricultural, open space or other qualified purposes shall be entered into by the commissioner unless there has been a finding of the State Treasurer that such contract will preserve the exclusion from federal taxation, if any, of the interest on the bonds of the state issued to finance such acquisition. Any proceeds derived from any such contract shall not be deemed revenues of the General Fund and shall be deposited in the appropriate bond proceeds account. Any such proceeds shall be applied, upon allotment thereof, to acquisition of additional agricultural real property and related personal property or, upon approval of the State Bond Commission, for such other authorized capital purposes which the State Treasurer finds will best

assure the preservation of such exclusion from federal taxation, if any, including payment of the principal, redemption price, if any, or interest on the bonds issued for the purchase of the agricultural property."